

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4 January 2010 has been entered.

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration believes the named inventor or inventors to be the original and first inventor or inventors of the subject matter which is claimed and for which a patent is sought.

It is not signed by all of the inventors.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

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Authorization for this examiner's amendment was given in a telephone interview with Mr. Mark Kafka on 21 January 2010.

Claims 33, 38-40, 87, 89, 92, 101, 103-107, and 109-122 are allowed.

Please amend claim 117 as follows:

Claim 117. (Presently amended) The method of claim 33, wherein identifying viral resistance in step (b) comprises:

(i) contacting a sample containing a hepatitis C virus nucleic acid sequence with a detectable oligonucleotide probe having a sequence complementary to a codon that encodes a serine in the highly conserved consensus sequence, XRXSGXXXT, or SEQ ID NO: 63, of domain B of the RNA polymerase region of the hepatitis C virus;

(ii) allowing the probe to hybridize to the sequence; and

(iii) detecting the hybridization of the probe to the sequence.

Reasons For Allowance

The following is an examiner's statement of reasons for allowance:

(1) The objection of claim 107 is withdrawn in view of Applicant's amendment.

(2) The nonstatutory double patenting rejection of claims 33, 34, 39, 40, 89, 92, 101, 103-107 and 109-122 as being unpatentable over claims 15 and 16 of US Patent No. 7,169,766 B2 (hereinafter '766) in view of Arens *et al.* (2001, hereinafter "Arens") is withdrawn in view of Applicant's amendment.

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(3) The provisional nonstatutory double patenting rejection of 33, 34, 39, 40, 89, 92, 101, 103-107 and 109-122 as being unpatentable over claims 2-7, 9, 12, 13 and 17 of US Patent No. 7,169,766 B2 (hereinafter '766) in view of Arens *et al.* (2001, hereinafter "Arens") is withdrawn in view of Applicant's amendment.

(4) The rejection of claims 33, 34, 92, 104, 107 and 109-122 under 35 U.S.C. §103(a) as being obvious over Carroll *et al.* (US 7,105,499 B2, priority filing date 22 January 2001, hereinafter "Carroll") in view of Arens *et al.* (2001, hereinafter "Arens") is withdrawn in view of Applicant's amendment.

(5) The rejection of claims 33, 34, 39, 40, 89, 92, 101, 103-107 and 109-122 under 35 U.S.C. §103(a) as being obvious over Carroll *et al.* (US 7,105,499 B2, priority filing date 22 January 2001, hereinafter "Carroll") in view of Arens *et al.* (2001, hereinafter "Arens") and Sinko *et al.* (1998, hereinafter "Sinko") is withdrawn in view of Applicant's amendment.

(6) Claims 33, 38-40, 87, 89, 92, 101, 103-107, and 109-122 are apparently free of prior art of the record. The Examiner is not aware of any teaching or suggestion in the prior art of record that would point one skilled in the art to detect a mutation from Ser to Thr at amino acid 282 in the hepatitis C virus RNA polymerase sequence, corresponding to the presence of cytidine at nucleotide 8443 of the RNA polymerase region of the HCV genome, as a method step to identify viral resistance to the 2'-branched nucleoside.

Conclusion

Claims 33, 38-40, 87, 89, 92, 101, 103-107, and 109-122 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LOUISE HUMPHREY whose telephone number is (571)272-5543. The examiner can normally be reached on Mon-Thu, 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Mondesi can be reached on 571-272-0956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. H./
Examiner, Art Unit 1648

/Robert B Mondesi/
Supervisory Patent Examiner, Art Unit 1645